GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 161/AIL/Lab./J/2011, dated 24th August 2011)

NOTIFICATION

Whereas, the Award in I.D.No.13/2007, dated 31-3-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. M.R.F. Limited, Puducherry and Thiru K. Logeswaran (Emp. No.70084) over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Thursday, the 31st day of March 2011

I. D. No. 13/2007

K. Logeswaran (Emp.No.70084),
S/o. Kannan, Kunichampet,
Kodukoor Post, Pondicherry.

.. Petitioner

Versus

The Management of M.R.F. Limited,
P.B. No.1, Eripakkam Village,
Nettapakkam Commune,
Pondicherry-605 106. .. Respondent

This petition coming before me for final hearing on 30-3-2011 in the presence of Thiru T. Gunasegaran, advocate for the petitioner, Thiruvalargal L. Swaminathan and I. Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt .No.53/2007/Lab./AIL/J, dated 15-3-2007 of the Labour Department, Pondicherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the non-employment of K. Logeswaran by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

(2) If not what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that the respondent is a limited factory registered under the Indian Companies Act, which manufactures tyres of all kinds and started its commercial production in the year 1998. At the time of starting its production, all the workers were designated as "Trainees/Apprentices" for a paltry wage of ₹ 40 per day and the workers who had I.T.I. qualification were paid ₹ 50 per day. The workers were not given the benefits of E.S.I. coverage or the benefits of P.F. coverage. After six months, few workers were given written order of appointment designating them as "Trainees". The management adopted the method of designation as "Trainees/ Apprentices" only to deny the benefits of labour welfare legislations and utilising the insecurity in employment, it extracted more than the maximum possible workload from the workers. After two years in or about the year 2001, the workers by name Thiruvalargal (1) B.Sakthivel, (2) K.Deivasigamani, (3) V.Balamurugan, (4) S.Jayaprakash, (5) S.Bharathiraja, (6) P. Anbouradjou, (7) C. Kumaravelan, (8) P. Pachyappan, (9) A.Sivanandhane, (10) S. Srinivasan and (11) P. Mohan were issued orders placing them on probation. The management did not have certified standing orders at the time of starting its production. But after about 3 years on 11-6-2001, the management handpicked certain workers to come to the Labour Department to give their consent for the certification of the draft of their standing orders. At that time, the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V.Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the WP. No. 20270/ 2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending.

The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No.1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal. The petitioner was one such reinstated workers, who has been the member of the M.R.F. Thozhilalar Sangam.

The petitioner joined the service in the respondent's factory on 6-11-1998 and he was employed without any written order of appointment being given to him and was paid the rate of ₹ 45 per day. On 1-7-1999 the respondent's factory had given a first written order of appointment designating the petitioner as "Apprentice" for a period of 6 months. On the expiry of 6 months period set out in the aforesaid order, he was again issued a second order, dated 1-1-2000 again designating him as an 'Apprentice' for another period of 6 months. Further, after expiry of another 6 months, the petitioner was again issued another order, dated 1-7-2000 designating him as "Apprentice". Thereafter no order was communicated to him and when he was terminated for the first time for his membership of the M.R.F. Thozhilalar Sangam, no written order was issued on being reinstated under the orders of the Hon'ble High Court, dated 10-6-2002. The model standing orders which applies to the petitioner, states that worker cannot be kept as trainee beyond 6 months.

The management through its handpicked men, having formed a trade union and having obtained registration for the same and having affiliated with the INTUC, the labour wing of the ruling Congress Party in Pondicherry, entered into a so-called settlement with the said outfit for certification of the standing orders, which standing orders do not apply for the petitioner as the same is as a result of a collusive arrangement with the handpicked men of the opposite party management and same is violated by fraud, collusion and is not a genuine settlement entered into with genuine collective bargaining agent, truly representing the workers. In any event the said settlement being one under section 18(1) of the Industrial Disputes Act, it is not binding on the union in which the petitioner is a member.

The members of M.R.F. Thozhilalar Sangam having been subjected to hostile discrimination and ill-treatment and the management unabashedly continuing to flout labour welfare legislation and employing contract labours in direct manufacturing process illegally, the said union decided should sit on a protest fast, to ensure protection of freedom of association of the workers. Accordingly Mr.V. Prakash, advocate, the President of the petitioner's union, sat on a fast at the respondent's factory for consecutive 5 days from 11-2-2004 to 15-2-2004. The petitioner was one among the workers who was active in the union activities relating to the fast that took place on 15-2-2004. Thus for the above show cause memo., dated 23-1-2004, for which the petitioner gave explanation through Professional Courier on 23-2-2004 denying the charges. After that on 19-2-2004 an enquiry notice was issued to the petitioner, wherein it was stated and falsely shows that the petitioner has not given any explanation and the management has appointed Mr. K. Babu as an Enquiry Officer and instituted an enquiry. Thereafter, the petitioner was issued an enquiry notice stating that the enquiry would be held on 26-2-2004. In the enquiry took place on 26-2-2004, the petitioner denied the charges before the Enquiry Officer and stated that he had already sent an explanation through Professional Courier. In the enquiry, management witness J. Natarajan-M.W.1 deposed against the petitioner and during the cross-examination, the management witness J.Natarajan could not answer as to what job M.W. was allotted to the petitioner and the reply M.W. was அன்று நான் அந்த ஷிப்டிற்கு கிடையாது. இரண்டாவது ஷிப்டில் இருந்தேன். During cross-examination, M.W.1 has stated that he came to work at 2.50 p.m. and he says in examination in chief that he was taking charge from the previous person, he saw the occurrence. It is clear that the management witness is a tutored one to victimise the petitioner.

The very non-mentioning of the name of PW.1 in the show cause memo., dated 23-1-2004 and the non-furnishing of his alleged report Ex.P1 along with the show cause notice, clearly shows that the Ex.M1 was cooked up for the case and M.W.1 is not really a witness to the alleged charge but a doctored and tutored witness. The Enquiry Officer gave his findings dated 26-5-2004 accepting the management witnesses deposition and holding it against the petitioner for not examining any witness on his behalf. The management issued a second show cause notice, dated 3-6-2004 proposing dismissal of the petitioner from service and accepting the findings of the Enquiry Officer. The petitioner gave his explanation on 9-6-2004 objecting the report and the management's decision is not giving him an opportunity to show cause against such allegation.

The impugned dismissal of the petitioner, dated 11-6-2004 is illegal and unjustified on the ground that (1)the show cause memo. of 23-1-2004 was vague without material particulars, (2) the alleged report exhibit P1 given by PW.1 was never disclosed in the show cause memo. and the name of the witnesses were also not mentioned. None of the management witnesses figure in the show cause memo. Therefore, the petitioner was not put in notice of the material which the show cause memo. was based, while issuing the show cause memo, (3) the reading of the enquiry proceedings clearly shows that having issued a show cause memo. the management doctored the evidence in justifying the same and the management witnesses were tutored to speak to the contents of the show cause memo, (4) the Enquiry Officer did not inform the petitioner of his rights to have the assistance of co-employee and the petitioner was certainly handicapped both in his cross-examination and in all aspects of his defence due to the lack of assistance of his co-employee. The Enquiry Officer relied only upon the exhibit marked by the management and the same was not disclosed in the show cause memo, (5) The management erred in accepting the findings of the Enquiry Officer without any opportunity to show cause by the petitioner as to why the findings should not be accepted. The procedure adopted by the Enquiry Officer would clearly show that he had not been a neutral officer for ascertaining the truth but acted as an agent of the management to give a cloak of legitimacy to its legitimate object of victimisation, (6) The charges have not been proved and the management is attempting using the doctored enquiry to oust the petitioner from service due to its membership of the genuine trade union, (7) it is submitted that the past record referred to in the second show cause memo between 18-3-2000 and 10-9-2004 are without enquiry, without any basis and is a systematic recording by the management for future use and not based on any genuine incidents or happenings. It is part of the labour practice of the opposite party/management to have such record in respect of every workmen for future use. Therefore the management's claim of the alleged past record of the petitioner is liable to be rejected, (8) the impugned enquiry and impugned dismissal is violative of the model standing orders applicable to the petitioner, (9) the petitioner has been victimised for his membership of the genuine trade union, namely M.R.F. Thozhilalar Sangam.

The last drawn salary of the petitioner is ₹ 1,560 per month. Hence, prays to pass an order directing the respondent management to reinstate the petitioner in service with back wages, continuity of service and other consequential benefits and award costs.

3. The averments narrated in the counter statement filed by the respondent management are as follows:

It is contended by the respondent management that the petition is not maintainable either on law or on facts. The various allegations and contentions stated in the claim petition are factually incorrect and the petitioner only to achieve unlawful gains through suppression of material facts had approached the Labour Court with unclean hands. The factory at Pondicherry commenced trial production in the year 1998 and manufactured various radial tyres. The factory which started with 12 machines has slowly progressed to install nearly 131 machines as on date. As the manufacture of radial tyres is highly technical and is a complicated one and uses logistics control, the workmen takes time to learn the various skills on each machine and the workers have been inducted in phases over the past years. In order to give employment opportunity to the villagers, the respondent recruited the persons from nearby village of Puducherry who do not possess qualification beyond 12th standard. Only raw hands are recruited as Apprentices. The respondent denies that allegation with regard to E.S.I. and P.F. coverage. As soon as the E.S.I. notification was given all the employees including the Trainees/ Apprentices. The Assistant Director of Employment and Training vested with powers convened a meeting of the workmen on 19-9-2001 at the factory premises for the purpose of electing a workmen representative for certification of standing orders with their comments and corrections. The respondent management had engaged a maximum of 258 workmen out of which 16 are probationers, 140 are apprentices and 102 are casuals who are kept under observation to verify their willingness and to ascertain their basic aptitude. On and from 3-1-2001, an agitation commenced in the form of various illegal agitations and undersirable activities. By that time the probationary period of 6 probationers came to an end due to efflux of time and the training of 43 apprentices were determined and with no other alternative 102 casual services were dispensed with. Only at this backdrop, the so-called M.R.F. Thozhilalargal Sangam had filed Writ Petition in W.P. No. 20270/2001 and W.P. No. 20591/2001 and the respondent had filed writ appeals against the orders passed in the writ petitions in W.A. No.2043/2002 and W.A. No. 2044/2002 and the same is pending. In the said Writ Appeals, the Hon'ble High Court, Madras had granted stay of reinstating the terminated 49 workmen and other workmen were taken back at their original category and at that time only, the petitioner herein had been reinstated. The

respondent further denies that the wages paid are less than the minimum wages. The respondent management always abides by the labour laws and therefore the settlement entered with the union which enjoyed majority cannot be questioned by an isolated person.

The petitioner was suspended from service on 31-1-2004 in contemplation of disciplinary proceedings and the petitioner was issued with a show cause notice on 1-2-2004 followed by an enquiry. After receipt of enquiry report, dated 26-5-2004, the respondent management completely perused the report and was subjectively satisfied that the Enquiry Officer had conducted the enquiry by permitting the petitioner to examine his two witnesses apart from his own deposition. The Enquiry Officer had submitted the enquiry report on 26-5-2004 with an observation that the charges framed against the petitioner are proved beyond reasonable doubt. In strict adherence to natural justice, the second show cause notice, dated 3-6-2004 was issued to the petitioner along with enquiry report, for which the petitioner submitted his reply on 8-6-2004. On perusal of the past records, enquiry report and explanation given by the petitioner, the respondent management had arrayed to a conclusion to dismiss the petitioner and therefore passed an order of dismissal, dated 11-6-2004. The grounds (1) to (6) mentioned in the petition are all vague and a detailed reply has been submitted in the conciliation proceedings which may be treated as part and parcel of this counter statement. Grounds (7) that the reliance on the past records are baseless and without enquiry and hence the past records are to be rejected is stoutly denied by the respondent management. With regard to grounds (viii) and (ix), the respondent management has its own certified standing orders and the accusation of victimisation does not at all arise even remotely to the fact and circumstances of the case as no prejudice has been passed to the claim petitioner till date. The petitioner was paid stipend at the rate of ₹ 75 per day. The petitioner has no *locus standi* to claim reinstatement even remotely as the respondent management had acted in a fair and judicious manner based on the outcome of the enquiry report, dated 26-5-2004 and to the past record of the claim petitioner which can be proved through documentary evidence.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P10 were marked. On the side of the respondent, RW. 1 was examined and Ex.R1 to Ex.R27 were marked.

5. *Now the point for determination is:*

"Whether the non-employment of Mr. K. Logeswaran by the management of M/s. M.R.F. Limited, Puducherry is justified or not?"

On point :

6. The contention of the petitioner is that the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr. V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's writ appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending. The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a writ petition No.1769/2002 was filed against the said registration. In the said Writ Petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No.24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal.

7. The contention of the respondent is that the petitioner had chosen only to elaborate about the formation of M.R.F. Thozhilalargal Sangam led by its Union President V. Prakash and more specifically concentrated about the orders passed by the Hon'ble High Court, Madras in W.P. No.20270/2001, W.P. No. 20591/2001 and W.P. No. 19/2002, dated 10-6-2002, though the petitioner is not a party to the writ proceedings. He further submitted that the Division Bench of Hon'ble High Court, Madras by its order, dated 4-1-2008 in W.A. No. 2043 and 2044/2002 was pleased to modify the order in W.P. No. 20591/2001 and W.P. No. 19/2002 to the extent that the dismissed/ terminated employees had to approach the Labour Court or the Industrial Tribunal. The learned counsel for the respondent further submitted that in S.L.P. No.6004-6006/2009 against the judgment and order, dated 4-1-2008 in W.A. Nos. 2043 and 2044/2008 of Hon'ble High Court, Madras was preferred by the M.R.F. Thozilalargal Sangam and the Hon'ble Supreme Court by its record of proceedings dismissed the S.L.P. on 12-5-2009.

8. Neither the petitioner nor the respondent has produced the copies of the said judgments of the Hon'ble Supreme Court and Hon'ble High Court, Madras to come to the just decision of the case. In the absence of sufficient records, this court is not in a position to accept the contention of either the petitioner or the respondent.

9. The contention of the petitioner is that he joined the service of the respondent management on 21-10-1998 without any written order and the first written order of appointment was given on 1-7-1999 designating him as Apprentice for a period of six months, he was again issued a second order, dated 1-1-2000 for another period of six months designating as Apprentice and on the expiry of next period of six months, he was again issued another order once again designating as Apprentice for a further period of six months on 1-7-2000 and he was again issued another order designating him as apprentice, dated 1-1-2001 and the model standing orders, which applies to him states that a worker cannot be kept as a Trainee beyond six months.

10. In order to prove his claim, the petitioner was examined himself as PW. 1, who has stated about the said facts and through him, Ex.P1 to Ex.P10. Ex.P1 is the first appointment order, dated 1-7-1999 issued to him designating as Apprentice, Ex.P2 is the second order, dated 1-1-2000 and Ex.P3 is the third order, dated 1-1-2001.

11. On the side of the respondent, it is submitted that clause 3 of the certified standing orders of respondent company speaks about the classification of workman and clause 3.6 deals with apprenticeship under the Apprenticeship Act, 1961, which runs as follows:-

> "..... Company Training Scheme/Trainee means a learner who is paid stipend and whose terms and conditions are governed by the provisions of the Apprentices Act, 1961 and the amendments thereof or one who is recruited to undergo apprenticeship as per company's scheme either as Production Apprentice or Engineering Apprentice or apprentice for Service Department. The Apprenticeship period will be for 42 months comprising 4 spells, the first spell is for six months and the remaining 3 spells each are for one year duration and the company is not obliged to employ after the conclusion of their apprenticeship. At the expiry of any spell each training will be assessed and evaluated and on satisfactory completion of the training in each spell, the trainee will be put on to training for next spell. On completion of the total apprenticeship period the services will stand automatically terminated. However, they may be considered for the post of Probationer on satisfactory completion of training by the company at its discretion depending upon the exigencies and vacancy position. The status as an apprentice will not change until it is changed by the company in writing.... ...."

12. As per clause 3.6 of Apprenticeship under the Apprenticeship Act, 1961, the apprenticeship period will be 42 months comprising four spells, the first spell is six months and the remaining three spells each are for one year and accordingly, the respondent company issued Ex.P1 to Ex.P3 to the petitioner. Hence, there is no violation of standing orders by the respondent company in issuing the appointment order to the petitioner, as stated by the petitioner.

13. The next contention of the petitioner is that since he was active member in the M.R.F. Thozhilalar Sangam and since he was participated in the activities on the said union, he was terminated from service by raising false allegations against him.

14. *Per contra,* the contention of the respondent is that during the period of training, the petitioner had indulged in acts of indiscipline, insubordination, using filthy and obnoxious language, aiding and abetting the co-workers to squat, instigating the other workers were all proved in the enquiry proceedings and hence he was terminated from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:-

2011 LLR 51

Dismissal from service - Of the Appellant Manager (Sales) for threatening and abusing his superior - He was dismissed from service for misconduct duly proved in disciplinary enquiry- His writ petition against punishment was dismissed - Hence this writ appeal - In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct - Principles of natural justice were followed and proper opportunity was given to him - No ground found to interfere with the order of dismissal from service as upheld by Learned Single Judge.

2010 LLR 600

Industrial Disputes Act, 1947 - Section 11 A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman - Well settled law - Power under section 11 is not an appellate power- Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry -Punishment of putting him six stages down in pay scale for charge of misappropriation-Not shockingly disproportionate to the charges proved.

2010 LLR 744

Constitution of India, 1950 - Enquiry - Validity of - Principles of natural justice have been followed by the Enquiry Officer -Enquiry cannot be faulted on any ground and the findings are in no manner, perverse - No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 LLR 993

Departmental proceedings - Judicial review of - Scope of - Judicial review is matters of disciplinary proceedings - Is to find out whether the findings are perverse or unreasonable-Writ court recorded that there is sufficient evidence to support the charges - There is no legal or other infirmity in the order under appeal - Appeal dismissed.

Departmental proceedings - Enquiry report not furnished - In fact the disciplinary authority has not given any findings of its own in respect of charges levelled - Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

(2008) 5 MLJ 733

When the charge of habitual absence against the employee was proved and the competent authority/ employer imposed a proper punishment, it is not open to the Central Administrative Tribunal to interfere with the quantum of punishment on the premise that the charge of habitual absence of the employee was not grave. Such order of the CAT is clearly erroneous and is liable to be set aside.

(2008)3 MLJ 959 (SC)

Punishment - Of removal from service - Imposed on respondent/teacher on ground of misconduct as he physically assaulted Principal of School - Order of Tribunal quashing removal order and reducing punishment as being disproportionate - Same upheld by High Court in writ petition - Appeal - No good ground for Tribunal to interfere with punishment of removal imposed on respondent - Impugned order of High Court and Tribunal set aside - Appeal allowed.

2005 (2) CTC 730

.... Workman should have pleaded before employer at second show cause notice stage that proposed punishment was harsh and disproportionate to proved misconduct and that employer acted with *mala fide* - (i) Reading of various decisions would show that the following principles of law is laid down; The Tribunal is empowered to enquiry as to whether the enquiry conducted was fair and any principles of natural justice has been violated in the conduct of the enquiry; (ii) The Tribunal is empowered to enquiry as to whether the management *bona fide* came to the conclusion that the dismissal another punishment for the one which is sought to be meted out except when it finds that action of the management is shockingly disproportionate... .. Enquiry was fair and proper and charges were proved and the Tribunal should have approved the action of the employer in dismissing workman.

2001 LLR 587

Industrial Disputes Act, 1947 - Section 22 - Prohibition of strikes and lock-outs - Strike in a hospital where public utlity services are rendered will contravene the provisions of Section 22 - Such a strike would be *per se* illegal - Strike has been totally prohibited in utility service by the notification issued by the State Government - The strike resorted to by the workmen of the hospital is in contravention of the said prohibitory orders of the State Government issued under section 22 of the Industrial Disputes Act and, therefore, this strike is *per se* illegal as it violates the said notification and the prohibition orders.

Dismissal - Of hospital employees for resorting to and instigation for illegal strike - Before initiating disciplinary proceedings, it is not necessary that such a strike be declared as illegal.

2001 LLR 1213

Dismissal from service of Assistant Branch Manager - Who was committed various acts of omission and commission during the period of his posting as enumerated in charge sheet - Disciplinary proceedings initiated - Disciplinary authority dismissed the petitioner from service on the basis of enquiry report - Appellate authority by a reasoned order rejected the appeal - Full opportunity is defend himself given in the enquiry- Hence, no illegality proceedings or order - Dismissal from service of petitioner held not illegal.

2001 LLR 401 (MP HC)

Dismissal of bus conductor - Checking staff found that out of 23 passengers travelling in the bus 6 were travelling without ticket - The bus has covered 34 kms. From the place wherefrom 6 passangers had boarded the bus - Enquiry held- Charges proved - Dismissal of the conductor ordered -Challenged - Labour Court vitiated enquiry - Ordered reinstatement without back wages - Industrial Court directed reinstatement of the conductor with full back wages - Writ petition by the management - Corporation - High Court quashed the orders of Labour Court and

Industrial Court -Dismissal as ordered by the Corporation upheld - A dishonest person could not be allowed to continue in employment - The conductor has lost the confidence.

2001 LLR 1154 (SC)

.. in such an event if the appellant -Corporation losses its confidence vis-a-vis in the employee it will be neither proper nor fair on the part of the court to substitute the finding and confidence of the employee with that of its own by allowing reinstatement - The misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment - Also High Court was in error in dismissing the writ summarily - The termination order as passed by the Appellant Corporation is restored.

2001 LLR 1237 (Kar HC)

Loss of confidence - When a bus conductor misappropriates money as collected - His reinstatement as awarded by the Labour Court and Learned Single Judge - Cannot be sustained.

2010 LLR 913 (Guj. HC)

Dismissal - From service of bus conductor for misconduct of receiving fare and not issuing tickets - Challenged by petitioner-Conductor - For proved misconduct - High Court is of considered opinion - Punishment of dismissal is not in any way disproportionate to the charges levelled against the conductor, particularly taking into account the past record of service - There cannot be any misplaced sympathy in such matters.

2009 (5) CTC 160

Departmental Proceedings - Punishment - Past misconduct and record of service - Relevancy of - No need to mention in notice calling for further representation.

(2008) 3 SCC 310

Service law - Probation/Probationer - Termination - Grounds - Unsatisfactory probation - Authority competent to direct termination in case of - Need to give reasons/explanation, if any - Held, assessment of probation has to be made by appointing authority itself - The authority is however not required to give reason for termination except to inform employee that his performance was found unsatisfactory.

15. In order to prove the misconduct of the petitioner, the respondent has marked the complaints received from the Shift Supervisors of the respondent company as Ex.R1 to Ex.R3. A perusal of Ex.R1 to Ex.R3 reveals that the Shift Supervisor has complained about the misconduct alleged to have been committed by the petitioner that he shouted the other workmen to stop work, to the respondent management. But the said Shift Supervisors have not been examined as witnesses before this court to prove the misconduct alleged to have been committed by the petitioner.

16. On the side of the respondents, the warning letters issued to the petitioner have been marked as Ex.R15, Ex.R17, Ex.R18, Ex.R19, Ex.R20, Ex.R21 and Ex.R23 and Ex.R25. A perusal of those documents reveals that the petitioner was issued with the warning letters for the various misconducts of unauthorised absent and indiscipline behaviour using filthy and obnoxious language against the staff of respondent management alleged to have been committed by him. Those warning letters have been sent to the petitioner through post, which was refused by the petitioner as stated by the respondent and the unclaimed RPAD covers have been marked as Ex.R16, Ex.R22 and Ex.R24. As admitted by both parties, the above warning letters have been issued during the year 2003 and 2004. There is no plausible explanation from the respondent as to why they have sent those warning letters through post when the petitioner was in service.The doubt arises that in order to create documents against the petitioner, those documents have been sent to the petitioner through post. Hence, the complaints under Ex.R1 to Ex.R3 and the warning letters under Ex.R15, Ex.R17, Ex.R18, Ex.R19, Ex.R20, Ex.R21 and Ex.R23 and Ex.R25 cannot be taken into consideration.

17. The contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and he has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings and in fact the petitioner has not committed any misconduct as alleged by the respondent, but the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

18. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the petitioner and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice and even in the domestic enquiry, the petitioner had been allowed to be assisted by their

co-employee. Further it was contended that the petitioner has been given fair chance to cross-examine the witnesses and the Inquiry Officer on considering the documents as well as the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved and on the conclusion of the report submitted by the Inquiry Officer the petitioner has been terminated from his services by way of punishment for the misconduct committed by him and hence, there is no scope to intervene in the order of this management by the Labour Court.

19. At this stage when I peruse the domestic enquiry report which has been marked as Ex.R6, relating to the petitioner, we can understand that the petitioner was advised to participate in the enquiry and the petitioner has participated in the enquiry. On the side of the respondent, four witnesses were examined and they were cross-examined by the petitioner. The petitioner has not examined any witnesses and marked any documents on his side. With this, the enquiry was completed. The Enquiry Officer based on the evidence of the witnesses and the documents available on records, found that the charges framed against the petitioner are proved and accordingly, he submitted his report to the respondent management. Then based on the enquiry report, the respondent management issued a second show cause notice under Ex.R7 calling for his explanation. The petitioner submitted his written explanation under Ex.R8 and since the explanation submitted by the petitioner was not satisfactory, the respondent management dismissed from service.

20. Hence on perusal of Ex.R6 and other documents filed on the side of the respondent, it is evident that the petitioner was given fair opportunity to defend his case and the respondent has correctly followed the procedure for conducting the domestic enquiry as contemplated under labour law. Hence, the enquiry conducted by the respondent management is fair and proper.

21. The learned counsel for the respondent has submitted that in I.A. No. 160/2010 filed by the respondent, this court gave a finding that the domestic enquiry conducted by the respondent management is fair and proper and hence the termination order issued by the respondent based on the enquiry report is in accordance with law.

22. It is true that this court in I. A. No. 160/2010 gave a finding that the domestic enquiry conducted by the respondent management is fair and proper. But it does not mean that the termination order issued by the respondent is in accordance with law. This court gave the opinion in I.A. No.160/2010 only about the way of conducting the domestic enquiry, which is fair and proper.

23. As per section 11 A of Industrial Disputes Act, if the court is satisfied that the order of discharge or dismissal was not justified, the court can very well pass an order to set aside the order of dismissal. In this case on hand, the management stated that four witnesses were examined in the domestic enquiry. The enquiry report Ex.R6 was only marked before this court. But the enquiry proceedings was not filed before this court. The charge against the petitioner is that he shouted to the fellow workmen to 'stop the work' and he along with the fellow workmen went towards the other section by shouting and howling by indulging indiscipline manner. The Enquiry Officer in his report has stated that from the above four witnesses, it is crystal clear that the delinquent employee along with other employees had indulged to instigate others to strike work that he had abused and threatened the other superiors. To prove the same, no oral evidence has been given by any witnesses before this court. If the entire enquiry proceedings has been produced before this court, then the court can very well come to the conclusion as stated by the respondent. In the absence of any material witness to say about the occurrence and in the absence of entire enquiry proceedings, this court cannot come to the conclusion that the employee could have been indulged in such gross indiscipline. At this stage, it is pertinent to refer the following decision, which is relevant to this case:-

(1973) 1 Supreme court case 813

> The Workmen of M/s. Firestone Tyre and Rubber Company of India (P) Limited, *Vs.* The Management and others: "Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence *contra*."

24. As per the above decision, eventhough opportunity was given to the respondent to establish their case, they have not tried to bring the material witnesses, who alleged to have been participated in the enquiry proceedings. The management has not utilized the opportunity to prove their case in this case. On the other hand, the Enquiry Officer has also not analised the evidence in the enquiry in a proper manner. The contradictory evidences of M.W. 1 to M.W. 4 as stated by the Enquiry Officer was not deeply gone into by the enquiry authority. In the Ex.R6 enquiry report, the Enquiry Officer narrates about the deposition of M.W. 1 to M.W. 4. The above versions are contradictory from each other. To verify the same, the

enquiry proceedings has not been produced before this court. The charges framed against the delinquent employee are also not specific and the punishment given by the management is also disproportionate. Hence, I feel that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned and further as already stated the respondent has not proved the misconducts alleged to have been committed by the petitioner. In the above circumstances, the dismissal order, dated 11-6-2004 is illegal and the same is liable to be set aside.

25. The final contention of learned counsel for the respondent is that the petitioner is gainfully employed with the another organisation by name Pest Control (India) Private Limited and is getting a salary of ₹ 14,000 per month. In order to prove the said contention, the respondent has marked the Attendance Register of Pest Control as Ex.R26 and the pay slip of the petitioner as Ex.R27. Ex.R26 attendance register covers the period from December 2007 to February 2011. A perusal of Ex.R26 reveals that the petitioner, as employee of Pest Control (P) Limited, signed in the attendance register in all the above months. Further a perusal of Ex.R27 pay slip of the petitioner reveals that the petitioner is getting the salary of ₹ 14,246.34 in the month of February 2011. These documents are not challenged by the petitioner. Hence, the respondent has proved that the petitioner is now working in Pest Control (P) Limited, Pondicherry. In the above circumstances, the petitioner is not entitled for the reinstatement. But at the same time, since the misconducts alleged to have been committed by the petitioner have not been proved by the respondent through their own documents, the petitioner is entitled for full back wages and other benefits from the date of dismissal order till November 2007. Accordingly, this point is answered.

25. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement. However, the petitioner is entitled for full back wages and other benefits till November 2007. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 31st day of March 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner:

PW.1 — 30-9-2010 K. Logeswaran

List of witnesses examined for the respondent:

RW.1 — 8-3-2011 P. Velmurugan

List of exhibits marked for the petitioner:

Ex.P1	— 1-7-1999	Apprenticeship order
Ex.P2	— 1-7-2000	Apprenticeship order
Ex.P3	— 1-1-2001	Apprenticeship order.
Ex.P4	—23-1-2004	Show cause notice.
Ex.P5	— –	Explanation given by the petitioner.
Ex.P6	—19-2-2004	Enquiry notice issued by the respondent management.
Ex.P7	— –	Second show cause notice.
Ex.P8	— 9-6-2004	Explanation given by the petitioner.
Ex.P9	— 11-6-2004	Dismissal order
Ex.P10	— 15-3-2007	Failure report issued by the Labour Officer (Conciliation), Pondicherry.

List of exhibits marked for the respondent by consent:

Ex.R1	— 21-1-2004	Complaint from Production Supervisor marked by consent.
Ex.R2	— 21-1-2004	Complaint from the Supervisor, dated 29-1-2004 marked by consent.
Ex.R3	— 21-1-2004	Complaint from the Shift Foreman marked by consent.
Ex.R4	— 23-1-2004	Show cause notice marked by consent.
Ex.R5	— 23-2-2004	Written explanation marked by consent.
Ex.R6	— 26-5-2004	Enquiry report, marked by consent.
Ex.R7	— 3-6-2004	Second show cause notice issued to the claim petitioner.
Ex.R8	— 9-6-2004	Written explanation of the claim petitioner marked by the consent.
Ex.R9	— 27-2-2006	Petition filed under section 2A before the Labour Officer (Conciliation), Puducherry.
Ex.R10	— 24-7-2006	Counter statement, dated 23-8-2006 filed by the respondent management before the Labour Officer (Conciliation), Puducherry.

Ex.R11—	–	Tamil version of the certified standing orders.
Ex.R12—	1-7-1999	Apprenticeship order of the claim petitioner marked by consent.
Ex.R13—	14-8-2003	Advice letter issued to the claim petitioner marked by consent.
Ex.R14—	4-9-2003	Copy of the unclaimed RPAD cover sent to the petitioner marked by consent.
Ex.R15—	7-9-2003	Warning letter issued to the claim petitioner marked by consent.
Ex.R16—	4-10-2003	Copy of the unclaimed RPAD cover sent to the claim petitioner.
Ex.R17—	25-10-2003	Warning letter issued to the claim petitioner.
Ex.R18—	1-11-2003	Warning letter issued to the claim petitioner.
Ex.R19—	1-11-2003	Warning letter issued to the claim petitioner.
Ex.R20—	2-11-2003	Warning letter issued to the claim petitioner.
Ex.R21—	3-11-2003	Warning letter issued to the claim petitioner.
Ex.R22—	19-11-2003	Copy of the unclaimed RPAD cover sent to the claim petitioner.
Ex.R23—	22-12-2003	Severe warning letter issued to the claim petitioner.
Ex.R24—	6-1-2004	Copy of the unclaimed RPAD cover sent to the claim petitioner.
Ex.R25—	8-1-2004	Severe warning letter issued to the claim petitioner.
Ex.R26—	–	Copy of attendance register for the petitioner for the period from December 2007 to February 2011.
Ex.R27—	–	Photocopy of pay slip of the petitioner for the period from December 2007 to January 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 162/AIL/Lab./J/2011, dated 25th August 2011)

NOTIFICATION

Whereas, the Award in I.D.No. 17/2000, dated 21-2-2011 of the Labour Court, Puducherry in respect of the industrial dispute raised by Sumangala Steel Uzhiyargal Sangam against the management of M/s. Sumangala Steels Limited, Puducherry over suspension of the operation of the factory and non-employment of M. Ravichandran and 60 others has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Monday, the 21st day of February 2011

I. D. No. 17/2000

M. Ravichandran,
Member of Sumangala Steel
Uzhiyargal Sangam .. Petitioner

Versus

The Management,
Sumangala Steels Limited .. Respondent

This petition coming before me for final hearing on 3-2-2011 in the presence of Thiru D. Soundararajan, advocate for the petitioner, Thiruvalargal R. Padmanabhan, L. Sathish and K. Ravikumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G. O. Rt. No. 94/2000/Lab./AIL/L, dated 27-7-2000 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the suspension of the operation of Sumangala Steels Limited, Mettupalayam, Pondicherry with effect from 4-12-1999 by its management is justified or not? If not, to give appropriate directions.

(2) Whether the non-employment of the workmen by name M. Ravichandran and 60 others by the management of M/s. Sumangala Steels Limited, Mettupalayam, Pondicherry is justified or not?

(3) To what relief/benefits, the said workmen are entitled to?

(4) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. In the claim petition, the petitioner has stated as follows :-

The petitioner joined as electrician and working in respondent company eversince from 1989. He was lastly paid ₹ 1,340 as salary in November 1999. Thereupon unlawful suspension of operational activities by the respondent company as also causing non-employment to all its workmen including the petitioner herein, this industrial dispute is caused.

The respondent had not cared for the welfare and benefit of its employees and had failed to consider their just and lawful demands, its employees through union had raised a charter of demands *vide* I.D. No. 1/1997 before this court and the said industrial dispute was allowed on 25-11-1998. Then the respondent had preferred the appeal as against the said order *vide* W.P. No.18118/2000 before the Hon'ble High Court of Judicature at Chennai to keep in abeyance of just award passed in I.D. No. 1/1997. Thereafter on realising that it is legally bound to perform and comply its legal obligation as per term of award in the said industrial dispute the respondent had developed a design to terminate all its employees. It is only in such backdrop, it had unlawfully suspended its operational activities by projecting false and vexatious reason to cause non-employment and to carry out its activities later by recruiting new employees. Thus in such aforesaid real facts and circumstances, the respondent had unlawfully suspended its operations without any lawful justification to cause non-employment to all its workmen including the petitioner. Hence, this industrial dispute is filed to pass an order declaring that the suspension of activities caused by the respondent is unjust and illegal and directing the respondent to reinstate the petitioner with back wages and other attendant benefits.

3. The respondent in his counter statement has stated as follows:-

The respondent had put up a factory at Mettupalayam, Pondicherry in the year 1987. It used to employ about 40 permanent workmen and a few temporary workmen. In the year 1990, the Sumangala Steel Uzhiyargal Sangam. representing the workmen, submitted a charter of demands. On 20-3-1991, a settlement was made under section 12(3) of the industrial dispute Act providing for increase in wages. The settlement was to remain in force till 30-9-1994. In the year 1994, the respondent went in for an induction furnace. After the expiry of 1991 settlement, the Sumangala Steel Uzhiyargal Sangam placed a charter of demands and the demands were referred to this court for adjudication. After the installation of induction furnace, which was operated by a special team experienced workmen, the old workmen were deployed for other jobs which they refused. They remained idle and they were paid wages. Ultimately on 29-9-1995 a settlement was signed by which the workmen agreed to work in the assigned areas. However they started work only from 26-6-1996. On 26-5-1999 the workmen resorted to go slow and in spite of repeated notices, they refused to restore normalcy. They struck work from 28-6-1999. On 29-6-1999 the respondent declared a lock out at 10.05 hours. By that time, the company could not pay the arrears of electricity charges and the power supply was disconnected on 29-6-1999.

The workmen and the members of the Sumangala Steel Uzhiyargal Sangam also returned for work on 29-9-1999. Again on 27-10-1999 the power supply was disconnected. The workmen were coming to the factory, idling their time and were indulging in grouping and gossiping. Though no production was carried on between 20-9-1999 and 29-9-1999 and from 27-10-1999 to 30-11-1999, the workmen were paid their wages. Accordingly, on 3-12-1999 the management put up a notice exempting the workmen from reporting to duty from 4-12-1999. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, Ravichandran was examined as PW.1 and through him Ex.P1 to Ex.P4 were marked. On the side of the respondent, RW1 was examined and Ex.R1 was marked. Ex.X1 and Ex.X2 were marked.

5. *Now the point for determination is:*

"Whether the petitioner is entitled for the relief sought for?"

On point:

6. Originally, the I.D. No.17/2000 was referred to as per the above G.O. for 61 workers including the petitioner herein and the trade union, who appeared for the said workmen filed the claim statement, for which the respondent filed the counter. Subsequently, the petitioner's trade union and the respondent management entered into a settlement under section 18(1) of Industrial Disputes Act. As per the said settlement, it was agreed between the parties that out of 61 workers referred to in the reference made by the Government, only 16 workmen including the petitioner herein happened to be the permanent workers and excluding the petitioner, the settlement was entered into as the petitioner was not in India at that time. The settlement also expressly provided that the petitioner could pursue his claim on his return. Hence, my learned predecessor closed the industrial dispute as not pressed on 27-9-2001.

7. On returning to India from Sri Lanka, the petitioner filed a petition in I.A. No. 14/2002 for reopening the proceedings and in the cause title in I.A. No. 14/2002, the petitioner is referred to by his name and mentioned as member of Sumangala Steels Uzhiargal Sangam. This application was contested on merits and this court by order dated 15-4-2003 directed that the industrial dispute could be allowed to be re-opened only in so far as it relates to the petitioner. Accordingly, the present industrial dispute is filed by the petitioner.

8. The contention of the petitioner is that he joined as electrician eversince from 1989 and since the respondent has not cared for welfare and benefit of its employees, the employees union had raised a charter of demands in I.D. No.1/1997 before this court and the same was allowed on 25-11-1998 and the respondent management had preferred the appeal as against the said order in W.P. No. 18118/2000 before the Hon'ble High Court, Madras and when the said appeal was pending, the settlement was reached between the Additional Commissioner for Workmen Compensation and the union and as per the said settlement, he has not received any amount from the respondent management. The learned counsel for the petitioner further contended that the constitution of union does not so provide specifically the office bearer who wish to enter into the settlement with the employer should have the necessary authorisation but in this case the respondent has not proved in this aspect and also as per rule 58(4) of industrial dispute rules, no proof has been produced to prove that copy of the settlement sent to the Central Labour Commission, New Delhi. The learned counsel for the petitioner has relied upon the following decision to support his claim:-

1981 STPL (LE) 10663 SC:

"Where the workmen are represented by a recognised union, the settlement may be arrived at between the employer and the union. If there is a recognised union of the workmen and the Constitution of the union provides that any of its office bearers can enter into a settlement with the management on behalf of the union and its members, a settlement may be arrived at between the employer and such office bearer or bearers. But where the constitution does not so provide specifically, the office bearer or bearers who wish to enter into settlement with the employer should have the necessary authorisation by the executive committee of the union or by the workmen."

1969 STPL (LE) 4670 SC

"The settlement in the present case did not comply with r 58(4) which is mandatory. Therefore, under s.18(1) of the Act read with the other sub-section in the light of the definition of "Settlement" contained in s.2(p) there is no unfettered freedom in the management and the union to settle the dispute as they please so as to clothe the settlement with a binding effect on all workmen or even on all member workmen of the union."

9. In order to prove his claim, the petitioner has marked the copy of the award passed by this court on 25-11-1993 as Ex.P1, copy of the order passed in I.A. No. 13/1999 in I.D. 1/1997 as Ex.P2, copy of the circular issued by the respondent management as Ex.P3 and copy of the Memorandum of Settlement as Ex.P4.

10. The contention of the respondent is that the petitioner had left the employment from the company and had gained employed at Sri Lanka as electrician with a company M/s. Bhuwalka Steel India Private Limited, and was earning during that period and hence his claim suffering from non-employment and starvation is false and his claim that he be reinstated in service with full back wages is unjustified.

11. In order to prove his claim, the General Manager of the respondent company was examined as RW1 and the copy of the passport of the petitioner was marked as Ex.R1 through him. Though the respondent has claimed that the petitioner was working in Sri Lanka, no evidence was produced to prove the same. RW1 during the course of cross-examination, has admitted that since Ex.P4 is not binding on the petitioner, after returning from abroad, he can get his demand at any point of time. The relevant portion is as follows:-

"ம.சா.ஆ. 4 ல் பக்கம் 3 ல் கிளாஸ் 3 ல் மனுதாரர் ரவிசந்திரனுக்கு செட்டில்மெண்ட் செய்யவில்லை என்றால் சரிதான். ம.சா.ஆ. 4 ல் மனுதாரர் ரவிசந்திரனை கட்டுப்படுத்தாததினால் அவருக்கு உரிய கோரிக்கைகளை அவர் எப்போது வேண்டுமானாலும் வெளிநாட்டில் இருந்து திரும்பி வந்து பெற்றுக்கொள்ளலாம் என்று குறிப்பிட்டுள்ளது என்றால் சரிதான்".

12. On the side of the respondent, the learned counsel for the respondent submitted that the petitioner has no *locus standi* to question the fairness of settlement Ex.P4. He further added that the petitioner is also one of the members of the union and only because he was not in India, the union could not take a decision on his monetary compensation package and if only the petitioner had been in India at the time of settlement, the union would have signed the settlement on his behalf also and therefore, the settlement which was just, fair and reasonable cannot be questioned by the petitioner. The learned counsel for the respondent has relied upon the following decisions to support his contention:-

1995-I-LLJ-719

"A clause in the settlement entered into between the parties after negotiation and deliberation, cannot, by any stretch of imagination, be characterised as arbitrary, unfair, unreasonable and discriminatory. In fact, the clause (C.l. II) does not automatically entitle the employees of the E.B.O.T. to have the same terms and conditions of service of the employees of the respondent-Bank."

1977 Lab IC 162

"The justness and fairness of a settlement has to be considered in the light of the conditions that were in force at the time of the reference, it will not be correct to judge the settlement merely in the light of the award which was pending appeal before the Supreme Court. So far as the parties are concerned, there will always be uncertainty with regard to the result of the litigation in a court proceedings. When, therefore, negotiations take place which have to be encouraged particularly between labour and employer in the interest of general peace and well being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust."

2006-ILLJ pege 10

"If there was a dispute on the fairness of a settlement, the same could only be the subject matter of another industrial dispute. At no point of time, the respondent raised any dispute as regards the fairness of the settlement. Having obtained the benefits (under the settlement) it was not open to him to contend that the settlement was not fair. Nothing was brought on record to show that he was subjected to undue influence."

CDJ 2005 SC 726

"There was really no issue raised regarding fairness of the settlement. The Tribunal as well as the High Court came to the conclusions without any material that settlements were not fair - there has to be a specific reference in this issue which was not there before the Tribunal and in any event no material was placed or any positive stand taken by any workman - the orders of the learned single Judge and the Division Bench of the High Court as well as that of the Tribunal are set aside. The Tribunal shall decide the matter within six months from the date of receipt of a copy of the judgment. If however, a competent person raises a dispute regarding fairness of the settlement within a month from today before the appropriate Government with a copy of judgment the same shall be examined within two months from the date of the dispute is raised. It shall take a decision whether a reference is called for."

1981 II LLJ 420 S.C.

"A settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which came into play where an industrial dispute is under adjudication. If the settlement has been arrived at by a vast majority of workmen with their eyes open and was also accepted by them in its totality. It must be presumed to be fair and just and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal though that the workers deserved marginally higher emoluments than they themselves though they did."

1997 II LLJ 1157

"The Court allowed the writ petition, holding that when the Industrial Court on evidence has found that the settlement was fair and accepted by all the workmen except six procedural violation would not render an act otherwise just, fair and proper, as illegal. In the instant case, the Industrial Court was in error in holding the settlement as void and illegal."

AIR 1978 Supreme Court 982

"Moreover as has been found by the Tribunal, out of 1328 workmen who were in the company's service on July 31st 1973, 995 workmen have signed the settlement and have also accepted their dues thereunder and 242 workmen have accepted their dues under the settlement by actually signing the receipts though they have not signed the settlement. It will also be recalled that 911 workmen who left the company between January 1st 1963 and July 31st 1973 had also accepted their dues under the settlement. As has been stated, the settlement was

made with the Bhartiya Kamgar Sena (respondent No. 3) which represented a very large majority of the workmen of the company. It is a significant fact that the bonafides of that union have not been challenged before us. There is therefore no reason why the Tribunal's finding that the settlement is just and fair should not be accepted."

13. Though the union represented all the workmen and the name of the petitioner also found place in the list of workmen, due to his absence, the union did not press the claim of the petitioner. However, both the respondent management and the union consciously agreed that the petitioner could make his claim on his return. Hence, as per the respondent's own admission, the petitioner is entitled to get the benefit as per the said settlement Ex.P4 and the rights of the petitioner stood preserved even under the terms of the settlement, which formed part of the award dated 27-9-2001. Furthermore the majority of workers accepted the settlement under Ex.P4. The ratio laid down in the case of TATA Engineering and Locomotive Company Limited *Vs.* Workmen (1981 II LLJ 429), Johnson and Johnson Limited Vs. Maharastra General Kamgar Union and Others and Herbertsons Limited Vs. The Workmen of Herbertsons Limited (1988 LAB I.C. 162) wherein it was held that it must be presumed to be fair and just and not liable to be ignored merely because a small number of workers were not parties to it. Which are very much squarely applicable to this case. The argument of the learned counsel for the petitioners questioning the constitution of the union and mere technicality of non-compliance of rule 58(4) of Central Industrial Rules, 1957 will not be helpful at this stage, because once for all the dispute was settled by the majority workmen and received the compensation from the management. Therefore, the relief of the petitioner mentioned in the above reference need not be discussed in length. In these circumstances, it will be appropriate to pass an order directing the respondent to pay some monetary compensation to the petitioner on par with other workmen.

14. Considering the facts and circumstances of the case and service, this court comes to the conclusion that the petitioner is not entitled to get the reinstatement with back wages and other benefits. However, based on the settlement Ex.P4. the respondent is hereby directed to pay a sum of ₹ 1,40,000 to the petitioner towards monetary benefit. Accordingly, this point is answered.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of February 2011.

T. MOHANDASS
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

PW1 — 21-6-2007 M. Ravichandran

PW2 — 4-2-2010 P. Murugaiyan

List of witnesses examined for the respondent :

R.W.1— 6-10-2010 K. Vijayakumar

List of exhibits marked for the petitioner:

Ex.P1 — Copy of the judgment in I.D. No. 1/1997, dated 25-11-1998.

Ex.P2 — Copy of the I.A. No. 13/99 in LD.1/97

Ex.P3 — Copy of the circular, dated 3-12-1999 issued by respondent.

Ex.P4 — Copy of memorandum of settlement

List of exhibits marked for the respondent:

Ex.R1 — Copy of the passport of the petitioner

List of official exhibits:

Ex.X1 — Letter, dated 4-2-2010 submitted by Chief Inspector of Factories to the court.

Ex.X2 — Copy of Registration and Licence to work a factory.

T. MOHANDASS
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY

OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/S1/Exam/2010-11.

Puducherry, the 7th September 2011.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, bearing Serial Number SEC 3597609 under Register Number 510817 of March 2006 in respect of S. Balaguru, an ex-pupil of Professor Annousamy Higher Secondary School, Bahour is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

T. ANOUMANDANE,
Chief Educational Officer.